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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/536,273	03/27/2000	Steven B. Smith	9311.6	3734

21999            7590            02/25/2003  
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EXAMINER	
CHILCOT, RICHARD E	
ART UNIT	PAPER NUMBER

3627

DATE MAILED: 02/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/536,273	SMITH, STEVEN B.	
	Examiner	Art Unit	
	Richard E. Chilcot, Jr.	3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 29 March 2002.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-3,5,7-18 and 21-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3, 5, 7-18 and 21-24 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s) _____   |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

The delay in the issuance of the following Office action is due to processing errors. The examiner apologizes for such delays and regrets any inconvenience the delays may have caused the applicants.

#### **DETAILED ACTION**

##### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-3, 5, 7-18 and 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fano in view of Pare, Jr. et al.

Fano teaches a PDA which is used in performing a wireless point-of-sale purchase transaction; the PDA comprises a microprocessor, a short range communication device which receives sales information from a wireless vendor device, a long range communication device which transmits purchasing information to a vendor including payment means (col. 47, line 58 through col. 52, line 15). While Fano teaches

all the elements of the claimed invention, Fano fails to teach using the long-range communication for preauthorization of a purchase.

On the other hand, Pare, Jr. et al. teaches a tokenless, biometric transaction system which allows the purchaser to request authorization for a purchase. Pare, Jr. also teaches the authorization is transmitted to the vendor for the purchase of an item. It should also be noted Pare, Jr. et al. teaches a biometric input device.

Accordingly, to use the long range communication means of Fano to obtain a preauthorization for the purchase of an item, as suggested by Pare, Jr. et al., would have been obvious for one having ordinary skill in the art at the time of the invention. The advantage of such a modification to Fano would have been to provide greater security against fraud for the purchaser.

#### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

... (1) Wang, note the abstract which describes a preauthorization payment system; and

... (2) PC Computing article entitled, "Gas Pump, Phone Home: Finally! Connect everything to everything else without wires or hassles.", note the teaching of a Bluetooth network in a cell phone for purchases at a vending machine.

Art Unit: 3627

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard E. Chilcot, Jr. whose telephone number is 703-305-4716. The examiner can normally be reached on 5/4/9 1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on (703) 308-5183. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-3687 for regular communications and 703-308-3687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1020.



Richard E. Chilcot, Jr.  
Primary Examiner  
Art Unit 3627